

Cahoy Dec.
Ex. 51

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL)
ROBOT ANTITRUST LITIGATION) Lead Case No.
) 3:21-cv-03825-VC
)
THIS DOCUMENT RELATES TO ALL)
CASES)
)
)
)
)
SURGICAL INSTRUMENT SERVICE) Case No.
COMPANY, INC.,) 3:21-cv-03496-VC
)
)
Plaintiff,)
)
)
v.)
)
)
INTUITIVE SURGICAL, INC.,)
Defendants.)
)

REMOTE VIDEO RECORDED DEPOSITION OF
MICHAEL BURKE, M.D.

Tuesday, September 27, 2022

REPORTED BY: RENEE HARRIS, CSR, CCR, RPR
JOB NO. 5490765
PAGES: 1 - 146

1 A. No.

2 Q. Have you ever discussed the lawsuit with
3 colleagues of yours?

4 A. No.

5 Q. Dr. Burke, when did you first join Valley 09:16:10
6 Medical?

7 A. August of 1984.

8 Q. And at some point, you became the
9 chairman of the department of surgery; correct?

10 A. A couple of times, actually, yeah.

09:16:25

11 Q. When did you first become chairman of the
12 department of surgery at Valley?

13 A. 1988.

14 Q. And if I refer to Valley Medical Center
15 as "Valley," will you understand what I'm talking 09:16:44
16 about?

17 A. Yes.

18 Q. That's the hospital where you were
19 employed for a number of years?

20 A. Correct.

09:16:52

21 Q. So you first became chairman of the
22 department of surgery at Valley in 1988; how long
23 did you remain the chairman?

24 A. It was a two-year term, I think. Yeah.

25 Q. And you said you became the chairman of 09:17:14

1 the department of surgery again at some point;
2 correct?

3 A. Yes, in I think 2002.

4 Q. And how long did you remain chairman at
5 that point? 09:17:25

6 A. Until I retired in January.

7 Q. And you retired in January of 2022?

8 A. Correct.

9 Q. So you were the chairman of the
10 department of surgery at Valley Medical for 09:17:44
11 approximately 20 years?

12 A. That's correct.

13 Q. What responsibilities did you have as the
14 director of -- or as the chairman of the
15 department of surgery? 09:18:06

16 A. Well, it's kind of a -- we have monthly
17 meetings to inform the staff of operations in the
18 hospital, and it was pretty broad from the
19 standpoint of what we covered in those meetings.

20 We did not involve issues with gynecology 09:18:27
21 or orthopaedics as they had their own
22 subdivisions.

23 Q. And who ran the gynecological
24 subdivision?

25 A. Over what period of time? I mean, 09:18:51

9 BY MS. CAHOY:

10 Q. I believe you testified previously that 09:50:24
11 you were involved in developing the credentials
12 for robotic privileges; is that correct?

13 A. Correct.

14 Q. Was it a requirement of the hospital that
15 surgeons with robotic privileges also have 09:50:34
16 privileges to perform the basic procedure, either
17 open or laparoscopically?

18 A. Yes.

19 Q. And why did the hospital have that
20 requirement to -- to your knowledge? 09:50:49

21 A. Well, if the procedure runs into
22 complications, you have to open the patient and
23 complete the procedure. So the answer is you have
24 to be trained on how to handle a potential
25 complication.

1 Q. Why would a surgeon need to have
2 credentials to perform the basic procedure
3 laparoscopically?

4 A. For the same reasons.

5 Q. Are there any other reasons that -- that 09:51:18
6 you considered it important that surgeons have
7 privileges to perform the basic procedure, either
8 open or laparoscopically?

9 A. I think the foundation of any surgical
10 procedure is the capability to do it open. So 09:51:52
11 that if you deploy any minimally invasive
12 protocol, whether it's laparoscopic or robotics,
13 that your fallback position is that you can do it
14 open.

15 MS. CAHOY: So I -- let's pull up Tab 09:52:19
16 20 -- or Tab 55. And I believe we're
17 starting here with defense Exhibit 49.

18 So if we could -- Paul, if you could
19 please mark Tab 55 as defense Exhibit 49.

20 (Exhibit 49 was received and marked 09:52:43
21 for identification on this date and is
22 attached hereto.)

23 BY MS. CAHOY:

24 Q. And, Dr. Burke, you may need to refresh
25 your screen as soon as Paul gets this uploaded so 09:52:52

1 A. The ports were a little bit larger, the
2 -- which required a different instrument through
3 each of the arms, so we'd have to have stock of
4 all of that equipment.

14 Q. And you said the advances in the
15 technology had improved. What are examples of 10:22:44
16 ways in which you thought the technology had
17 improved in the Xi, as compared to the Si?

18 MR. BATEMAN: Objection.

19 Mischaracterizes testimony.

20 THE WITNESS: Well, we had better 10:23:03
21 articulating instrumentation. We had vessel
22 sealers that were an improvement. Eventually
23 staplers came online, articulating staplers.
24 Over the course of the process, they were all
25 more valuable. 10:23:25

The image consists of a grid of horizontal black bars of varying lengths and positions. The bars are arranged in approximately 5 rows and 4 columns. Some bars are longer and span multiple grid cells, while others are shorter. There are also a few small black squares scattered among the bars, particularly in the upper and middle sections. The overall appearance is that of a page with redacted text, where the bars represent the redacted content.

1 STATE OF CALIFORNIA)

2) (Ss.

3 COUNTY OF LOS ANGELES)

4 I, RENEE HARRIS, do hereby certify that I
5 am a licensed Certified Shorthand Reporter, duly
6 qualified and certified as such by the State of
7 California;

8 That prior to being examined, the witness named
9 in the foregoing deposition was by me duly sworn
10 to testify to tell the truth, the whole truth, and
11 nothing but the truth;

12 That the said deposition was by me recorded
13 stenographically;

14 And the foregoing pages constitute a full,
15 true, complete and correct record of the testimony
16 given by the said witness;

17 That I am a disinterested person, not
18 being in any way interested in the outcome of said
19 action, or connected with, nor related to any of
20 the parties in said action, or to their respective
21 counsel, in any manner whatsoever.

22 DATED: October 12, 2022

23 

24 Renee Harris, CSR, CCR, RPR

25 CA CSR No. 14168,

NJ CRR No. 30XI00241200; RPR